

RESOLUTION NO. 01- 28

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AND RATIFYING THE ORGANIZATION AND INCORPORATION OF THE TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC., AS A CORPORATION NOT FOR PROFIT UNDER THE LAWS OF THE STATE OF FLORIDA; RATIFYING THE ISSUANCE OF A REVENUE NOTE IN THE ORIGINAL PRINCIPAL AMOUNT OF UP TO \$3,600,000 ISSUED ON BEHALF OF THE TOWN BY THE TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC. TO FINANCE THE PURCHASE OF THE WATER UTILITY SYSTEM SERVING THE TOWN AND TO PROVIDE FOR CERTAIN CAPITALIZABLE COSTS ASSOCIATED THEREWITH; APPROVING AND RATIFYING THE PLEDGE OF THE NET REVENUES OF THE WATER UTILITY SYSTEM TO SECURE REPAYMENT OF THE NOTE; MAKING AND RATIFYING CERTAIN COVENANTS IN CONNECTION WITH THE NOTE; AUTHORIZING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the provisions of the Act, hereinafter defined.

SECTION 2. DEFINITIONS. The following terms in this Resolution shall have the following meanings unless the text otherwise expressly requires:

"Act" means Chapters 166 and 180, Florida Statutes, and other applicable provisions of law.

"Bank" shall mean SunTrust Bank and any subsequent registered holder of the Note.

"Code" shall mean the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated pursuant thereto or pursuant to any predecessor provisions of the Internal Revenue Code of 1954, as amended.

"Fiscal Year" shall mean the period commencing on October 1 of each year and continuing to and including the succeeding September 30, or such other annual period as may be established by law as the Issuer's fiscal year.

"Issuer" shall mean Town of Fort Myers Public Works Services, Inc., a Florida not for profit corporation.

"Non-Ad Valorem Revenues" shall mean all revenues received by the Town from any source whatsoever other than ad valorem taxation on real and personal property and which are legally available to pay the principal of or interest on the Note, subject to any prior liens or encumbrances on all or any portion thereof, whether now existing or hereafter created.

"Note" shall mean the promissory note of the Issuer, issued on behalf of the Town, authorized to be issued pursuant to Section 5 of this Resolution.

"Pledged Revenues" shall mean the Water System Revenues, together with moneys, held in a revenue fund (if applicable) and investment earnings and profits thereon.

"Project" shall mean the acquisition of the Water System and certain capitalized costs associated therewith.

"Resolution" shall mean this resolution of the Town as hereafter amended and supplemented from time to time in accordance with the provisions hereof.

"State" shall mean the State of Florida.

"Water System Revenues" shall mean the net revenues of the Issuer.

"Water System" shall mean the water utility system serving the Town and to be acquired by the Issuer with the proceeds of the Note, including, but not limited to, any extensions of or additions to such system.

SECTION 3. FINDINGS. It is hereby found, determined and declared that:

1. The Town has previously determined that it is in the best interest of the Town to organize and incorporate the Issuer to own and operate the Water System.

2. The Issuer, an on behalf of issuer of the Town, is authorized pursuant to the Act to issue revenue bonds on behalf of the Town payable from the Pledged Revenues

3. The Town has previously determined that it is in the best interest of the Town that the Issuer issue the Note and use the proceeds thereof to finance the Project.

4. The Note does not constitute a general obligation, or a pledge of the full faith, credit or taxing power of the Town, the State or any political subdivision thereof, within the meaning of any constitutional or statutory provision or limitation. Neither the Town nor the State nor any political subdivision thereof, shall be obligated (1) to exercise its ad valorem taxing power or any other taxing power in any form on any real or personal property in the Town to pay the principal of the Note, the interest thereon or other costs incident thereto or (2) to pay the same from any funds other than the Pledged Revenues, in the manner provided herein. It is further agreed between the Town, the Issuer and the Bank that this Note and the indebtedness evidenced hereby shall not constitute a lien on any property of the Town, the State or any political subdivision thereof, but shall constitute a lien only on the Pledged Revenues.

SECTION 4. THIS INSTRUMENT TO CONSTITUTE A CONTRACT. In consideration of the acceptance by the Bank of the Note, this Resolution and Resolution No. 01-22, adopted by the Town on June 25, 2001 ("Resolution No. 01-22") shall be deemed to be and shall constitute a contract between the Town and the Bank.

SECTION 5. RATIFICATION OF INCORPORATION OF ISSUER. The Town hereby approves of and ratifies the organization and incorporation of the Issuer as a corporation not for profit under the laws of the State.

SECTION 6. APPROVAL OF NOTE ISSUANCE AND PROJECT. Subject and pursuant to the provisions hereof, the issuance by the Issuer of an obligation to be known as "Revenue Note, Series 2001", herein defined as the "Note", is authorized to be issued by the Issuer, on behalf of issuer of the Town, in the aggregate principal amount of not exceeding \$3,600,000.00. The Issuer is hereby authorized to apply the proceeds thereof to pay all costs of the Project, together with the costs of issuing the Note, and such other costs and expenses as may be necessary or incidental to the financing herein authorized. The Note shall be secured by a first lien upon the Pledged Revenues and, to the extent that Pledged Revenues are insufficient to pay the principal of or interest on the Note, a covenant by the Town to budget and appropriate Non-Ad Valorem Revenues sufficient to pay principal of or interest on the Note.

SECTION 7. EXECUTION OF NOTE; GENERAL AUTHORITY. The execution of a Joinder to Note in the name of the Town by its Mayor and attested by its Clerk and the affixing of the official seal of the Town or a facsimile thereof is hereby ratified and approved. All such further action taken by the Mayor and the proper officers of the Town and all such additional documents executed in connection with the issuance of the Note and to carry out the purposes of this Resolution and Resolution No. 01-22 is hereby ratified and approved. The Joinder to Note was executed by the Town to acknowledge its covenant to budget and appropriate funds from its Non-Ad Valorem Revenues in the event there is a deficiency in the Issuer's Pledged Revenues needed to pay principal and interest on the Note.

SECTION 8. SECURITY FOR THE NOTE. The Town hereby ratifies and approves of the pledge by the Issuer of the Pledged Revenues to secure the payment of the principal of and interest on the Note.

SECTION 9. ADDITIONAL COVENANTS. In addition to the other covenants and agreements contained in this Resolution and the Note, the Town hereby covenants and agrees as follows:

1. Financial Information. The Town shall, after the close of each Fiscal Year, cause the financial statements of the Town to be properly audited by a recognized independent certified public accountant or recognized firm of independent certified public accountants, and shall require such accountants to complete their report on the annual financial statements in accordance with applicable law. Such annual financial statements shall contain, but not be limited to, a balance sheet, a statement of revenues, expenditures and change in fund balance, and any other statements required by law or accounting convention, and a report by such accountants disclosing any material default on the part of

the Town of any covenant or agreement herein which is disclosed by the audit of the financial statements. The annual financial statement shall be prepared in conformity with generally accepted accounting principles. A copy of such audited financials for each Fiscal year shall be furnished to the Bank within 180 days after the end of the Fiscal Year. The Bank shall also be provided with any annual budget, prepared by the Town, within 30 days of its adoption, and any other financial information the Bank may reasonably request.

2. Budget and Appropriate. In addition to the Issuer's obligation to pay the Note from the Pledged Revenues, the Town covenants that in the event during any Fiscal Year, the amount of Pledged Revenues are insufficient for the Issuer to make all required payments of principal and interest on the Note, the Town will budget and appropriate sufficient Non-Ad Valorem Revenues to make such payments of the principal of and interest on such Note as it becomes due. Such covenant and agreement on the part of the Town to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative until all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the Town, the Town does not covenant to maintain any services or programs now provided or maintained by the City which generate Non-Ad Valorem Revenues.

Such covenant to budget and appropriate does not preclude the Town from pledging in the future its Non-Ad Valorem Revenues, nor does it require the Town to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the Bank a prior claim on the revenues as opposed to claims of general creditors of the Town. Such covenant to appropriate revenues is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on bonds and other debt instruments). However, the covenant to budget and appropriate in its general annual budget for the purposes and in the manner stated herein shall have the effect of making available for the payment of the principal of and interest on the Note, in the manner described herein, Non-Ad Valorem Revenues and placing on the Town a positive duty to appropriate and budget by amendment, if necessary, amounts sufficient to meet its obligations hereunder. This covenant to budget and appropriate amends and supplements the covenant to budget and appropriate set forth in Resolution No. 01-22.

3. Increase in Water System Rates. In the event Pledged Revenues are insufficient to make all required payments of principal and interest on the Note, the Town agrees to take all necessary steps to increase the water utility rates charged to the users of the Water System, including scheduling a public hearing to consider such increased rates. This covenant shall be in addition to the Town's covenant to budget and appropriate set forth above and shall amend and supplement the Town's covenant set forth in Resolution No. 01-22.

4. Compliance with Laws. The Issuer shall maintain compliance with all federal, state and local regulations regarding the operations of the Water System.

SECTION 10. BANK QUALIFICATION. The Note has been designated as a "qualified tax-exempt obligation" within the meaning of Section 265 of the Code because the Town and the

Issuer do not reasonably anticipate issuing more than \$10,000,000 of tax-exempt obligations (including those obligations of any entities controlled by the Town), including the Note, during the current calendar year.

SECTION 11. FORM OF JOINDER TO NOTE. The text of the Joinder to Note shall be in substantially the following form with such omissions, insertions and modifications as may be necessary and desirable and authorized and permitted by this Resolution or by any subsequent resolution adopted prior to the issuance thereof, and with such amendments as necessary to reflect a lesser principal amount, if applicable.

JOINDER TO NOTE

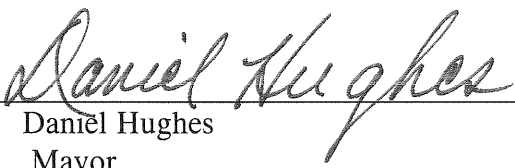
The Town of Fort Myers Beach hereby executes this Joinder to Note for the purpose of acknowledging the covenant to budget and appropriate made by the Town in its Resolution No. 01-22 adopted on June 25, 2001, as supplemented and amended, (the "Resolution").

The Resolution provides that in the event the Pledged Revenues are insufficient to make all required payments of principal and interest on the Note, the Town covenants to budget and appropriate from its Non-Ad Valorem Revenues the funds necessary to make such payments.

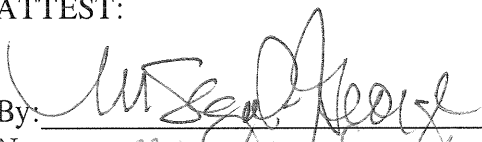
Signed and sealed this ____ day of July, 2001.

TOWN OF FORT MYERS BEACH

(SEAL)

By: 
Name: Daniel Hughes
Mayor

ATTEST:

By: 
Name: Marsha Sigal-George
Clerk

SECTION 12. REPEALING CLAUSE. All resolutions or orders and parts thereof in conflict herewith, to the extent of such conflict, are hereby suspended and repealed.

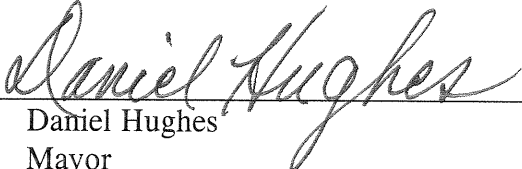
SECTION 13. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

PASSED, ADOPTED AND APPROVED, this 10th day of September, 2001.

TOWN OF FORT MYERS BEACH

(SEAL)

By: _____


Daniel Hughes
Mayor

ATTEST:

By: _____

Name: _____

Clerk